

EMD

This case looks to an escrow violation, where the agent failed to timely deposit the EMD check by one day. Even a late deposit of only one day is an escrow violation. However, the brokerage firm had clear policies regarding escrow and the agent took full responsibility for his actions, which the board took into consideration.

THE SITUATION:

Mr. Michael Horn was issued a Real Estate Salesperson License in Virginia in March 2015 and was a licensed real estate salesperson at Southwest Realty, Inc ("Southwest Realty").

On April 3, 2019, the Board received a written complaint from Trina Russo, Broker for Southwest Realty, which stated that Mr. Horn had turned in a late earnest money deposit (EMD) check.

THE INVESTIGATION:

Investigators learned that in February 2019, Ms. Camilla Beck entered into an Exclusive Right to Represent Buyer contract with Southwest Realty, which commenced on February 3, 2019, and is set to expire on June 30, 2019. Mr. Horn is listed as the Buyer's agent.

On March 21, 2019, Mr. Horn submitted a Standard Purchased Agreement offer ("contract offer") on behalf of Ms. Beck for the purchase of 100 Main Street, Roanoke, VA ("100 Main Street"). The contract listed Southwest Realty as holding the escrow deposit.

On March 22, 2019, Mr. Horn received a \$500 EMD check from Ms. Beck and placed the check in an envelope slot near his desk, as the seller had not yet signed the offer. Mr. Horn then continued to show Ms. Beck another property that was listed for sale at 31 West Ave, Roanoke, Virginia ("31 West Ave"). After viewing this property, Ms. Beck decided to withdraw her offer on 100 Main Street, and instead submit a new contract offer to purchase 31 West Ave. Mr. Horn notified the seller via email that Ms. Beck was withdrawing her offer.

Ms. Beck's offer on 31 West Ave. was accepted and the contract was ratified on March 25, 2019. The contract required the EMD to be deposited within five business days of ratification and Southwest Realty was listed as the escrow agent. Mr. Horn stated on April 2, 2019, he was in the process of retrieving a personal check from the envelope slot near his desk when he found the EMD check. He immediately notified the front desk staff of his error and submitted the check for deposit. It was deposited into the escrow account on April 2, 2019, six business days after ratification. He also notified the listing firm representing the sellers that the EMD was deposited on the sixth business day after ratification.

Mr. Horn stated that he intended to use the \$500 EMD check from the previous offer as the EMD for the ratified contract. He also told investigators that instead of selecting the "submit" option on DotLoop, he selected the "shared" option. This meant that the front desk staff did not receive the contract documents to review. Mr. Horn stated that if the front desk staff would have received the contract documents, they would have asked him for the \$500 EMD check. Finally, he stated that he was

the licensee responsible for the EMD check as he was the licensee that handled the buyer responsibilities for the transaction.

Investigators received the Southwest Realty policy regarding EMD, which stated in part:

1. Sales Associates must hand in any contract file and earnest money deposit (EMD) check within one business banking day from the date of ratification of Contract of Purchase, or in accordance with the written terms set out in the Contract.
2. Sales Secretaries must process the contract file and deposit the EMD check into the company escrow account within one business banking day from the receipt of the contract file from the Sales Associate.
3. In the event a Sales Associate is asked by a client to hold money in the company's escrow account and there is no Contract of Purchase to which the money is attached, there must be a written escrow agreement in place and reviewed by company management before the money can be deposited into the company's escrow account.

The transaction closed on May 10, 2019.

THE RESULT:

The Board determined that Mr. Horn failed to submit the EMD check in a timely manner. The board issued a fine of \$250 and required that he attend three classroom hours of Board-approved continuing education pertaining to Escrow Management.